IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 330 OF 1998.

Dr. (Smt.) Hirabai Atmaram Borkar,
C/o Dr. Atmaram Borkar,
Baina, Vasco da Gama, Goa. ... Petitioner.

VERSUS

1. State of Goa,
   Through the Chief Secretary,
   with office at Secretariat,
   Panaji, Goa.

2. Goa Public Service Commission
   with Office at E.D.C. House,
   Atmaram Borcar Road,
   Panaji, Goa.

3. Dr. (Miss) Pushpabai Janardana
   Dukle, Institute of Psychiatry
   and Human Behaviour, Altinho,
   Panaji, Goa. ... Respondents.

Petitioner in person.

Mr. N.K. Sawaikar, Additional Government Advocate
for the Respondents No.1 and 2.

Respondent No.3 absent.

CORAM: S.J. VAZIFDAR &
P.V. HARDAS, JJ.

DATE: 1ST APRIL, 2003.

ORAL JUDGMENT: **(PER HARDAS, J.)**

This is a petition filed by the petitioner who seeks for quashing and setting aside the Order dated 29.9.1995, whereby the third respondent was appointed as Assistant Professor in the Institute of Psychiatry and Human Behaviour. The other relief which is claimed by the petitioner is for a direction, directing the respondents to give to the Petitioner a

deemed appointment (to the post of Assistant Professor) with effect from 16.3.1985 or in the alternative with effect from 29.9.95 with full back wages and all other consequential benefits.

2. The brief facts necessary for the decision of this petition are set out hereunder :-

On 10.8.1981 a new post of Assistant Professor in the Institute of Psychiatry and Human Behaviour was created. Accordingly, in 1984 an advertisement inviting applications for the post of Assistant Professor in the Institute of Psychiatry and Human Behaviour was published. The petitioner as well as the third respondent had applied for the said post. The petitioner and the third respondent were called for the interview on 30.10.1984. The third respondent was ultimately selected and by Order dated 16.3.1985 the respondent No.3 was appointed as Assistant Professor in Psychiatry, Institute of Psychiatry and Human Behaviour, Altinho, Panaji. The present petitioner being aggrieved by the aforesaid Order appointing the third Respondent as Assistant Professor, filed Original Application No.214/1986 before the Central Administrative Tribunal, New Bombay Bench, New Bombay. The Central Administrative Tribunal, hereinafter referred to as "CAT" for the

sake of brevity, by its Order dated 20.7.1987 quashed and set aside the appointment of the third Respondent as the CAT found that the third respondent was not eligible to be appointed as Assistant Professor. Thus the appointment of the third respondent appointed by Order dated 16.3.1985 was struck down. The CAT further directed the Union Public Service Commission (hereinafter referred to as UPSC for the sake of brevity) to consider whether the petitioner was suitable for appointment to the said post and to pass appropriate orders within a period of three months. The CAT further directed that in case the present petitioner was not found suitable, the UPSC will have to re-do the exercise by calling fresh applications for filling the post and this should be done within six months from the date of the Order. In pursuance to the Order of CAT, dated 20.7.1987, the respondents issued an Order dated 25.9.1987 reverting the third respondent back to the substantive post of Assistant Medical Officer. It appears that the Union of India being aggrieved by the Order of CAT dated 20.7.1987, filed Special Leave Petition before the Supreme Court. The Supreme Court passed the following Order dated 9.1.1989 :-

" Special Leave granted. Pending Appeal, there will be stay. "

3. The respondents on the recommendation of the Goa Public Service Commission, by Order dated 11th July, 1991, appointed the third respondent to the post of Medical Superintendent in the Institute of Psychiatry and Human Behaviour. Meanwhile the Supreme Court, by its Order dated 30th March, 1995 dismissed the appeal filed by the respondents. The Order of the Supreme Court in Civil Appeal No.60/1989 dated 30th March, 1995 reads as under :-

> " Dispute arose about eligibility of appointment of Dr. Janardhan and Dr. De Souza at the instance of Dr. Borkar. The Central Administrative Tribunal, New Bombay Bench allowed the petition. The Union of India is aggrieved by this Oder. When S.L.P. was filed all the three, namely, the person who filed the claim petition and the persons against whom it was filed were impleaded. Later on the S.L.P. was dismissed so far Dr. Borkar and Sri De Souza were concerned. It was confined against Dr. Janardhan only.
>
> We have heard learned counsel for parties. We are informed that Dr. Janardhan is working as Superintendent. And Dr. Borkar is now Assistant Professor. Therefore, it does not appear expedient to decide this appeal on merits. The respondent and

> even the two other against whom the S.L.P. has been dismissed shall continue to work in which capacity they are working and the dismissal of this appeal without adjudication on merits would not affect them.
>
> The appeal is dismissed subject to above observations. No costs. "

4. It appears that an erroneous statement on behalf of Union of India was made that the present petitioner was working as Assistant Professor and accordingly a Review Petition No.1813/1995 was filed by the respondents. The Review Petition came to be dismissed by the Supreme Court on 20.9.1995. Meanwhile the present petitioner had been representing to the respondents for her appointment as Assistant Professor from 24.5.1995 to 4.2.1998. Meanwhile the third respondent was again appointed as Assistant Professor by an Order dated 29th September, 1995. It also appears that the petitioner was appointed as Assistant Professor by an Order dated 12.1.1996. The petitioner was thus placed junior to the third respondent. As pointed out by us earlier, the petitioner had submitted her representation and protested the action of the respondents in placing the petitioner, junior to the third respondent. The objections of the petitioner have not been duly considered which made the petitioner file the present

petition in 1998.

5. The petitioner has challenged the promotion of the third respondent on the ground that the Goa, Daman and Diu Medical Education Service Rules, 1979 postulates three years teaching experience in the concerned speciality as a Lecturer or in an equivalent teaching post in a Medical College/Teaching Institution after the requisite post-graduate degree qualification. The third respondent was admittedly not eligible and was found to be not eligible by the CAT by its judgment dated 20.7.1987 and the CAT had thus quashed the appointment of the third respondent to the post of Assistant Professor. Since the third respondent, we are informed, has attained the age of superannuation and has retired from service, we do not propose to interfere with her appointment as Assistant Professor.

6. The directions issued by the CAT in its judgment dated 20.7.1987 were explicit, inasmuch as the CAT had directed the UPSC to consider the petitioner for appointment to the post of Assistant Professor. The CAT made a pointed reference in this judgment to the fact that out of 12 candidates who had applied, in pursuance to the advertisement issued in 1984, 4 candidates had been called for interview, but

only two of them had appeared i.e. the petitioner and the third respondent. In this background therefore the CAT directed the UPSC to consider if the petitioner was eligible for promotion while striking down the appointment of the third respondent.

7. We have heard Mr. N.K. Sawaikar, learned Addl. Government Advocate on behalf of the Respondents No.1 and 2. Respondent No.3 who was appearing in person was absent when this petition was called out for hearing. The learned counsel appearing on behalf of Respondents No.1 and 2 on the basis of the affidavit-in-reply which has been filed by the respondents, has been unable to state whether the petitioner was considered fit and eligible for promotion in pursuance to the directions issued by the C.A.T. According to the learned counsel for Respondents No.1 and 2 since the stay was operating there was no question of the respondents considering the petitioner for appointment to the post of Assistant Professor. We may point out at this stage that the Supreme Court granted stay on 9.1.1989, whereas the directions were issued by the C.A.T. by its Order dated 20.7.1987. There is no explanation in the affidavit filed by the Respondents whether the petitioner was ineligible for the post of Assistant Professor. Since the petitioner had been called for

the interview and there is nothing to indicate that in the year 1985 the petitioner was not appointed as she was ineligible nor was such stand taken before the C.A.T., we feel constrained to observe that the petitioner was eligible to be appointed as Assistant Professor in 1985 when the Respondent No.3 came to be appointed by Order dated 16th March, 1985. The petitioner was ultimately appointed as Assistant Professor on 12.1.1996 and in the affidavit it is also not stated that the petitioner could not have been appointed in the year 1985 on the ground of ineligibility of the petitioner. The appointment of the third respondent on the ground of ineligibility was quashed and set aside by the C.A.T. by its Judgment dated 20.7.19987 and the Appeal in this regard, which was carried to the Supreme Court, was also dismissed by the Supreme Court by its Order dated 30.3.1995. We have therefore no hesitation in coming to the conclusion that the petitioner was eligible and qualified to be appointed as Assistant Professor in 1985 when the third respondent was so appointed as Assistant Professor.

8. As stated by us earlier, since the third respondent has attained the age of superannuation and has retired from service, we do not propose to disturb her appointment as Assistant Professor to which post

she was appointed by Order dated 20.9.1995. Since the petitioner has been appointed as Assistant Professor by Order dated 12.1.1996, according to us, the petitioner would be entitled to the back wages and all other consequential benefits with effect from three months from the date of the Order of C.A.T. i.e. 20.7.1987. The petitioner is thus entitled to deemed appointment from the aforesaid date and is entitled to all back wages and all other consequential benefits.

9. In the result, therefore, the petition is allowed. Rule is made absolute in the above terms. Costs quantified at Rs.1,500/-.

S. J. VAZIFDAR, J.

P. V. HARDAS, J.

sl.